



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MAP/172137

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on April 05, 2016, at Wausau, Wisconsin.

The issue for determination is whether a house the petitioner owns counts toward his Medicaid Purchase Plan asset limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



-1443

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [Redacted]

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Marathon County.
2. The Department notified the petitioner on January 11, 2016, that he would not be eligible for medical assistance under the Medicaid Purchase Plan due to assets exceeding program limits.

3. The petitioner owns real property located at [REDACTED]. Petitioner is married. The real property located at [REDACTED] is marital property.

DISCUSSION

The petitioner seeks medical assistance through the Medicaid Purchase Plan. Wis. Stat. § 49.472(3)(a). Recipients cannot have more than \$15,000 in assets. Wis. Stat. § 49.472(3)(b). Real estate is generally a countable asset if the person does not live on the property unless it is listed for sale or used in a trade or business. Medicaid Eligibility Handbook, § 16.9. Wisconsin policy holds that a property is considered to be used in a trade or business if it is operating for the “self-support” of the person. Id. § 15.6.3.1. Federal law pertaining to determining the assets of disabled persons forbids requiring a recipient to dispose of real estate that cannot be sold because “its sale is barred by a legal impediment.” 42 USC 1382b(b)

The Department determined that the entire value of real property owned by the petitioner should be allocated to the petitioner, as the property is titled solely in his name. The petitioner contends that the value should be split between him and his wife, as it is marital property. In support of this position, the petitioner established that the deed identifies petitioner as a married individual, and both petitioner and his spouse were named on a mortgage attached to the property.

The Medicaid Eligibility Handbook provides that,

16.4.2 Jointly Held Real Property

Apportion an equal share of any real property or any income derived from real property to each owner. To apportion, the equity or income must be available.

Wisconsin Statutes provide that

766.31 Classification of property of spouses.

(1) General. All property of spouses is marital property except that which is classified otherwise by this chapter and that which is described in sub. (8).

(2) Presumption. All property of spouses is presumed to be marital property.

(3) Spouse's interest in marital property. Each spouse has a present undivided one-half interest in each item of marital property, subject to all of the following:

(a) *Terminable interest in deferred employment benefit plan.* As provided in s. 766.62 (5), the marital property interest of the nonemployee spouse in a deferred employment benefit plan or in assets in an individual retirement account that are traceable to the rollover of a deferred employment benefit plan terminates at the death of the nonemployee spouse if he or she predeceases the employee spouse.

(b) *Division based on aggregate value at death.*

1. Spouses may provide in a marital property agreement that at the death of a spouse some or all of their marital property will be divided based on aggregate value rather than divided item by item. However, at the death of a spouse, a marital property agreement is not necessary for a division of marital property that is not item by item.

2. The surviving spouse and the successor in interest to the decedent's share of marital property may enter into an agreement providing that some or all of the marital property in which each has an interest will be divided based on aggregate value rather than divided item by item.

3. The surviving spouse and a distributee who is a successor in interest to all or part of the decedent's one-half interest in marital property may petition the court to

approve an exchange of interests in the marital property authorized under subd. 1. or 2., but court approval of the exchange is not required for the agreement under subd. 1. or 2. to be effective. If the court approves the exchange, the surviving spouse and the distributee shall exchange their respective interests in 2 or more items of marital property and distribute the items in a manner to conform with the exchange. The exchange shall:

- a. Occur before the final distribution of the assets under the governing instrument;
- b. Be composed of items which are fairly representative of the appreciation and depreciation that has occurred since the date of death;
- c. Be composed of items having a fair market value at the time of exchange equal to what would have been distributed had no exchange request been made, including any money used in the exchange; and
- d. Be reported with a written description of each item, its basis and its fair market value at the time of exchange in the manner prescribed by the department of revenue.

Wis. Stat. §766.31.

The petitioner has established that the real property located at [REDACTED] is jointly owned by petitioner and his wife. As such, the petitioner’s apportioned share of the real property should be equal to that apportioned to his spouse. I will order the agency to re-determine petitioner’s MAPP eligibility in accordance with this decision.

CONCLUSIONS OF LAW

1. The real property located at [REDACTED] is marital property of petitioner and his spouse.
2. The petitioner’s house is a countable asset that must be apportioned equally between petitioner and his spouse.

THEREFORE, it is ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it re-determine petitioner’s MAPP eligibility in accordance with this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of May, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 11, 2016.

Marathon County Department of Social Services
Division of Health Care Access and Accountability

